

COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject

Minor Encroachments into an Open Space Easement

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Purpose

To establish a policy for the granting of approval for the encroachment into open space easements for excavation, grading, construction and maintenance of buildings, structures or other improvements within Open Space Easements granted to the County of San Diego.

Background

For several years the County has been requiring open space easements as conditions of approval when granting various discretionary permits. In certain cases these easements have proved to be overly restrictive and it has been necessary for the Board to grant relief to the property owners.

The language used in the standard form of easement is very specific, for example:

That it shall not excavate or grade or permit any excavation or grading to be done, or place or allow to be placed any sand, soil, rock, gravel or other material whatsoever on the subject land without the written permission of the County of San Diego or its successors or assigns; provided, however, that grantor may excavate, grade or place sand, soil, rock or gravel or other material on the subject land as may be permitted by a Major Use Permit issued pursuant to the Zoning Ordinance of the County of San Diego.

This language in the standard form of easement has consistently been interpreted to mean that only the Board of Supervisors can grant permission for any activity in an open space easement. The only other alternative is for the property owner to obtain

approval of a Major Use Permit, a process that is both costly and time consuming.

Intent

It is the intent of the Board that all requests for construction, excavation, grading or any other activity prohibited by an open space easement be received initially by the Department of Planning and Land Use. In those cases where the prohibited activity is relatively minor and no environmental impacts are noted, the Director of Planning and Land Use will have authority to approve, conditionally approve or deny the request. In all other cases, the Director will forward a report with appropriate recommendations to the Board for consideration. This report shall be forwarded as expeditiously as permitted by the current departmental work-load, but in any case within 60 days of the

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filing date of the request. This time may be extended with the consent of the applicant.

Policy

It is the policy of the Board of Supervisors that:

Minor encroachments in an open space easement

1. Those encroachments, which in the judgment of the Director of Planning and Land Use, are minor in nature, involve no significant environmental impacts and will not significantly damage the integrity of the easement shall be reviewed and approved, conditionally approved or denied by the Director of Planning and Land Use. A fee shall be collected in accordance with the current fee schedule to cover the cost of processing these requests.

2. The decision of the Director may be appealed to the Planning Commission pursuant to the Administrative Appeal Procedure, Section 7200 of the Zoning Ordinance.

3. Those encroachments which, in the judgment of the Director of Planning and Land Use, are minor in nature but involve potentially significant environmental or planning impacts or would significantly damage the integrity of the easement shall be reviewed by the Director of Planning and Land Use and a report with appropriate recommendations shall be forwarded for the Board's consideration. A fee shall be collected in accordance with the current fee schedule to cover the cost of processing these requests.

Exceptions

Major encroachments, such as permanent buildings, extensive excavation or fill or encroachments that would destroy significant environmental resources are prohibited and shall not be approved under this policy. All such requests shall be processed under the procedures for the vacation of a County street, highway or Public Service Easement.

Sunset Date

This policy will be reviewed for continuance by 12-31-10.

Board Action

11-30-83 (7)

10-17-89 (54)

4-14-99 (11)

06-23-04 (12)

CAO Reference

1. Department of Planning and Land Use